

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Northern Division**

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EVERGREEN HEALTH COOPERATIVE INC. )  
Plaintiff, )  
v. )  
UNITED STATES DEPARTMENT )  
OF HEALTH AND HUMAN SERVICES, *et al.*, )  
Defendants. )  
Civ. No. 16-cv-2039

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**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION  
AND REQUEST FOR A HEARING**

Plaintiff Evergreen Health Cooperative Inc., by and through its undersigned counsel, hereby moves this Honorable Court for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants from applying, implementing, or enforcing the Government's Risk Adjustment Methodology, as described in 78 Fed. Reg. 15,410 (Mar. 11, 2013) and 79 Fed. Reg. 13,774 (Mar. 11, 2014), with respect to Evergreen Health. Specifically, Plaintiff requests that this Court enjoin Defendants from assessing and collecting a risk adjustment payment with respect to Evergreen Health for 2015, 2016, or any future years or, alternatively, from assessing or collecting any amount in risk adjustment payments without offsetting the amount that the Defendants owe to Evergreen Health in risk corridors payments. Defendants have assessed a \$24. 2 million risk adjustment payment against Plaintiff for calendar

year 2015. CMS intends to collect between \$2-3 million of this payment on July 15, 2016, by withholding funds owed to Plaintiff under other ACA programs. Plaintiff will be required to pay the remaining \$21-22 million of the risk adjustment payment assessed by CMS on August 15, 2016. The bases for this Motion are set forth in Plaintiff's accompanying Memorandum of Law, which is incorporated herein by reference.

Plaintiff respectfully requests a hearing on its Motion for Preliminary Injunction prior to August 1, 2016, so that this Court may have adequate opportunity to make a determination on Plaintiff's motion before Plaintiff is obligated to pay the remaining risk adjustment assessment amounts to Defendants. If Defendants are not enjoined from collecting the assessed payment, Evergreen Health will be at risk of being placed in receivership, will immediately be required to limit new enrollment, and will suffer irreparable damage to its ability to provide quality health care to its members at an affordable cost. As discussed in Plaintiff's accompanying Memorandum of Law, these injuries cannot be remedied by later relief.

Respectfully submitted,

/s/ Mary T. Porter

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June 30, 2016

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Caroline M. Brown, hereby certify that I caused a true and correct copy of Plaintiff's  
**Motion for Preliminary Injunction & Request for Hearing and accompanying**  
**memorandum of law** to the following via certified mail and in-person delivery:

Dept. of Health and Human Services  
Sylvia Burwell, Secretary of HHS  
Centers for Medicare and Medicaid Services  
Andrew Slavitt, Acting Administrator CMS  
200 Independence Ave., SW  
Washington, DC 20201

Loretta Lynch, Attorney General of the US  
United States Department of Justice  
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Rod J. Rosenstein, United States Attorney  
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Dated: June 30, 2016

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